IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE ACTING CHIEF JUSTICE MR.K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WA.No. 1652 of 2006(C)

AGAINST THE JUDGEMENT IN WPC.15210/2006 Dated 14/08/2006
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APPELLANT/IST PETITIONER:

DR.T.R.RAJESH,
THURUTHIL HOUSE, NORTH KUTHIYATHODE,
ERNAKULAM DISTRICT.

BY ADV. SRI.KURIAN GEORGE KANNAMTHANAM

RESPONDENTS/RESPONDENTS:
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1. THE STATE OF KERALA,
REP. BY THE SECRETARY TO THE GOVERNMENT,
HEALTH & FAMILY WELFARE DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF MEDICAL EDUCATION,
DIRECTORATE OF MEDICAL EDUCATION,
THIRUVANANTHAPURAM.

3. THE COMMISSIONER OF ENTRANCE
EXAMINATIONS, KERALA,
THIRUVANANTHAPURAM.

4. DR.P.BONNY NATESH,
ASST. PROFESSOR, SURGICAL GASTROENTEROLOGY,
DEPT. OF SURGICAL GASTROENTEROLOGY MEDICAL COLLEGE
HOSPITAL, KOZHIKODE, WORKING AS ASST.PROFESSOR,
SURGICAL GASTROENTEROLOGY, DEPT. OF SURGERY,
CALICUT MEDICAL COLLEGE, CALICUT.

R4 BY BY ADV. SRI.P.GOPINATH MENON
SRI.V.GIRI
R1 TO R3 BY SR.GOVERNMENT PLEADER MR.M.R.SABU

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.RADHAKRISHNAN, Ag.C.J. &
M.N.KRISHNAN, J.

W.A.No.1652 of 2006

Dated, this the 29th day of March, 2007

JUDGMENT

Radhakrishnan, Ag.C.J.

This writ appeal has been preferred by the first petitioner in W.P.(C) No.15210 of 2006. Writ petition was filed seeking a writ of certiorari to quash clause 5 of Ext.P5 prospectus in so far as it reserves the only seat available for M.Ch. Gastroenterology course as MES staff quota seat, wholly excluding general merit candidates. Petitioner also sought a writ of mandamus directing the respondents to fill up the only seat available for M.Ch. Gastroenterology course strictly on merit on the basis of the rank list drawn up pursuant to the common entrance examination.

2. Appellant has submitted that in the common entrance examination conducted for the course M.Ch. Gastroenterology Surgery he stood first in the rank list while the 4th respondent stood far below. The basic qualification prescribed in the prospectus for writing the entrance examination was only M.S. General Surgery. However, since the 4th respondent was a lecturer working in the Department of Gastroenterology Surgery,

even though he was having a lower rank he was admitted to the one seat available. The appellant herein even though was holding first rank in the rank list could not get admission since he was not working in the Department of Gastroenterogoly Surgery. Counsel referred to clause 2(c)(i) which says that in additions to the basic qualifications specified under clause 2(b), the applicants should be regular teachers of the Medical Education Service under the specialities concerned. It is on the basis of the abovementioned clause that the 4th respondent has been preferred even though he was lower in the rank list. Since he was working in the Department of Gastroenterology Surgery he was preferred though lower in the rank list.

3. We notice that the writ petitioner did not challenge the above mentioned clause, but only sought to quash clause 5 of Ext.P5 prospectus in so far as it reserves the only seat available for M.Ch. Gastroenterology course as MES staff quota seat, wholly excluding general merit candidates. In the absence of any challenge against preferring the regular teachers working in the specialities concerned, the contention raised by the senior

counsel cannot be entertained. We also notice that when the matter came up for hearing earlier, another Bench this Court directed the Government Pleader to ascertain the possibility of accommodating the petitioner also. The Director of Medical Education replied vide communication dated 5.1.2007 to the Advocate General stating that it is not possible to allot an additional seat to the petitioner by withdrawing the said seat from the next academic year since the seat sanctioned by the Medical Council of India is for each academic year. Further it is stated that it is not possible to accommodate the petitioner without disturbing the 4th respondent since there is only one sanctioned seat for M.Ch. Gastroenterology Surgery which is at Medical College, Thiruvananthapuram. It is also stated that admission to a seat over and above the sanctioned strength for the year 2006 is not permitted by Medical Council of India.

4. In the circumstances, even though the appellant has a point worth consideration, since he has taken the same examination along with the 4th respondent for admission to the seat available for M.Ch. Gastroenterology Surgery, clause 2(c)

of the prospectus stands in his way. We make it clear that the grievance raised by the appellant in the writ appeal is a matter calls for attention at the level of the Government as well as the Medical Council when they prepare prospectus for the next year.

Writ appeal is disposed of with the above observation.

K.S.RADHAKRISHNAN,
Ag.CHIEF JUSTICE.

M.N.KRISHNAN,
JUDGE.

vns